



APRA



MEMORANDUM OF UNDERSTANDING

between

the AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY

and

the AUSTRALIAN BUREAU OF STATISTICS

TRIM NO. DOC07/5194

CONTAINED

1 Parties to the Memorandum

- 1.1 This Memorandum of Understanding (MOU) records an understanding between the Australian Prudential Regulation Authority (APRA) and the Australian Bureau of Statistics (ABS) (the agencies) in areas of common interest where co-operation is essential for the effective and efficient performance of their respective functions.

2 Purpose

- 2.1 The agencies recognise that the provision of timely, accurate and relevant information about the financial sector is a vital component of each agency's function to encourage well-informed decision making. They mutually understand that co-operation on the definition, collection, on-going management and publication of information acquired from Australian financial institutions is desirable.
- 2.2 The agencies recognise that co-operation provides substantial benefits: to the community through consistent, timely and relevant statistics; to financial institutions through reduced reporting and administrative overheads; and to government in reduced costs by facilitating more effective compilation of compatible statistics on the financial industry and avoiding duplication of effort.
- 2.3 The agencies will co-operate to share data within the statutory limitations and obligations imposed by relevant legislation, and outlined in Annex 1.
- 2.4 This MOU is not intended to create binding obligations on either agency and each agency has the right to vary its terms at any time by agreement following consultation with the other agency.

3 Responsibilities

- 3.1 APRA was established by the *Australian Prudential Regulation Authority Act 1998* (the APRA Act). It is responsible for the administration of the APRA Act and for exercising the functions and powers conferred on it by the APRA Act and other relevant Commonwealth legislation.
- 3.2 APRA is responsible for the prudential supervision of banks, building societies and credit unions, life and general insurance companies, friendly societies, and superannuation funds (excluding self-managed superannuation funds). In performing its functions to protect the interest of depositors, policyholders and fund members, APRA is required to balance financial safety with efficiency, competition, contestability and competitive neutrality. APRA is also responsible for the registration of non-regulated financial institutions under the *Financial Sector (Collection of Data) Act 2001* (FSCOD Act).

- 3.3 APRA may determine data reporting standards for financial institutions for the purposes of, and under the legislative authority of, the FSCOD Act.
- 3.4 The ABS was established by the *Australian Bureau of Statistics Act 1975*. It is Australia's official statistical agency. It provides statistics on a wide range of economic, social and environmental matters, covering government, business and the general population.
- 3.5 The ABS Economic Statistics Group's responsibilities include the compilation and dissemination of regular macro-economic and industry-specific statistical information that draw on information provided from across financial and other sectors. In addition, the statutory functions of the ABS include: ensuring the coordination of the operation of government bodies in the collection, compilation and dissemination of statistics, with particular regard to the avoidance of duplication in the collection of information; and attaining comparability and integration of statistics, and the maximum possible utilisation of data collected by government.

4 Sharing information

- 4.1 The agencies mutually understand that, subject to legislative provisions, information available to one agency, which is relevant to the responsibilities of the other agency, will be shared.
- 4.2 The agencies will work together to minimise the reporting burden on financial institutions, in part by channelling their data collection activities through APRA if more than one party has interest in the data or if it is more convenient for the agencies or institutions.
- 4.3 APRA collects a range of prudential and statistical information from financial institutions and distributes these data to the ABS as required. The ABS understands that APRA will continue, and expand, this practice across financial institutions where there are areas of common subject matter interest, subject to legal restrictions and appropriate cost sharing, to minimise reporting overheads on financial institutions and duplication of effort by the parties.
- 4.4 The agencies recognise that the ABS may continue to survey financial institutions for information that is not required by, or relevant to, APRA and for which the APRA collection arrangement is not appropriate.

5 Guidelines for collection of data

- 5.1 APRA endeavours to collect data using statistical systems, processes and products that meet international best-practice standards.
 - 5.1.i APRA recognises the principle of objectivity, relevance and integrity in the collection, processing and delivery of statistics.
 - 5.1.ii APRA recognises internationally accepted standards, guidelines and good practices to ensure the methodological soundness of data

collections.

- 5.1.iii APRA recognises that accuracy and reliability of the data is necessary to ensure that statistical outputs portray reality.
- 5.1.iv APRA, with adequate periodicity and timeliness, will endeavour to ensure that the data are consistent and follow a predictable revisions policy.
- 5.1.v APRA will endeavour to ensure that the data are easily available and assistance to the ABS is adequate.

6 Cooperative working agreement

- 6.1 This MOU sets out the broad principles of cooperation between the agencies. Specific details of the arrangements for data collection and sharing are set out in the Cooperative Working Agreement between APRA and the ABS.

7 Consultation on policy changes

- 7.1 Each agency will notify the other of proposed changes in policy or decisions on the compilation and release of relevant statistical information, and provide the opportunity to provide input on changes that are likely to impact on the responsibilities of the other.

8 Cost of provision of data

- 8.1 The ABS will support the reasonable direct costs associated with APRA's data collection process under a cost-sharing arrangement determined under section 51 of the *Australian Prudential Regulation Authority Act 1998*.

9 Coordination committee

- 9.1 A data committee facilitates close co-operation between APRA, the ABS and the Reserve Bank of Australia. It is charged with managing the arrangements for the provision of data to the agencies.
- 9.2 The committee is responsible for ensuring that appropriate arrangements are in place to agree, review, monitor and report on the agencies' obligations under the Cooperative Working Agreement.
- 9.3 The committee meets semi-annually or more frequently as required.

10 Legislative authority

- 10.1 The APRA Act (paragraph 56(5)(a) and subsection 56(5A)) enables APRA to provide information collected under sections 9 or 13 of the FSCOD Act to the Australian Statistician for the purposes of the *Census and Statistics Act 1905* (the Census and Statistics Act). The ABS is bound by the general secrecy obligations under subsection 56(2) of the APRA Act and any conditions imposed by APRA under subsection 56(9) of the APRA Act, as well as the secrecy obligations in the Census and Statistics Act.

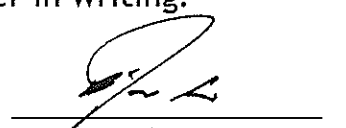
- 10.2 Records received by the Australian Statistician are collected under the provision of the Census and Statistics Act and are protected under the strict secrecy provisions of that Act. The Census and Statistics Act prohibits the disclosure of information furnished under authority of that Act (other than to the person from whom it was obtained) except in accordance with a determination, or for the purposes of that Act. The Census and Statistics Act provides for the publication or dissemination of statistical aggregates, but only in a manner that is not likely to enable the identification of a particular person or organisation.
- 10.3 The ABS will take all reasonable measures to:
- 10.3.i maintain the confidentiality of any protected information;
 - 10.3.ii protect any records provided to it under this MOU; and
 - 10.3.iii ensure that such information is used or divulged by the ABS only for the statistical purposes consistent with this MOU.
- 10.4 When exchanging confidential information, the agencies acknowledge the confidentiality and secrecy requirements of the Acts under which they operate. Each agency can specify the level of confidentiality attached to information provided to the other.

11 Variation and Termination

- 11.1 This MOU may be varied by the agencies mutual understanding in writing.
- 11.2 The understandings in this MOU will continue until terminated in accordance with clause 11.3.
- 11.3 APRA or the ABS may terminate the MOU at any time by notifying and obtaining the acknowledgement of the other in writing.



Dr John Laker
Chairman
Australian Prudential
Regulation Authority



Brian Pink
Australian Statistician
Australian Bureau
of Statistics

4 June 2007

Annex 1

Relevant provisions of the APRA Act

56 Secrecy—general obligations

(1)

officer means:

- (a) an APRA member; or
- (b) an APRA staff member; or
- (c) any other person who, because of his or her employment, or in the course of that employment:
 - (i) has acquired protected information; or
 - (ii) has had access to protected documents;

other than an employee of the body to which the information or document relates.

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protected document means a document given or produced (whether before or after the commencement of this section) under, or for the purposes of, a prudential regulation framework law and containing information relating to the affairs of:

- (a) a body regulated by APRA; or
- (b) a body corporate (including a body corporate that has ceased to exist) that has at any time been, or is, related (within the meaning of the *Corporations Act 2001*) to a body regulated by APRA; or
- (c) a person who has been, is, or proposes to be, a customer of a body regulated by APRA; or
- (ca) a registered entity; or
- (cb) a body corporate (including a body corporate that has ceased to exist) that has at any time been, or is, related (within the meaning of the *Corporations Act 2001*) to a registered entity; or

(cc) a person who has been, is, or proposes to be, a customer of a registered entity;

other than:

(d) a document containing information that has already been lawfully made available to the public from other sources; or

(e) a document given or produced under, or for the purposes of, a provision of the *Superannuation Industry (Supervision) Act 1993*:

(i) administered by the Commissioner of Taxation; or

(ii) being applied for the purposes of the administration of a provision administered by the Commissioner of Taxation.

protected information means information disclosed or obtained (whether before or after the commencement of this section) under, or for the purposes of, a prudential regulation framework law and relating to the affairs of:

(a) a body regulated by APRA; or

(b) a body corporate (including a body corporate that has ceased to exist) that has at any time been, or is, related (within the meaning of the *Corporations Act 2001*) to a body regulated by APRA; or

(c) a person who has been, is, or proposes to be, a customer of a body regulated by APRA; or

(ca) a registered entity; or

(cb) a body corporate (including a body corporate that has ceased to exist) that has at any time been, or is, related (within the meaning of the *Corporations Act 2001*) to a registered entity; or

(cc) a person who has been, is, or proposes to be, a customer of a registered entity;

other than :

(d) information that has already been lawfully made available to the public from other sources; or

(e) information given or produced under, or for the purposes of, a provision of the *Superannuation Industry (Supervision) Act 1993*:

(i) administered by the Commissioner of Taxation; or

- (ii) being applied for the purposes of the administration of a provision administered by the Commissioner of Taxation.

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- (2) A person who is or has been an officer is guilty of an offence if:
 - (a) the person directly or indirectly:
 - (i) discloses information acquired in the course of his or her duties as an officer to any person or to a court; or
 - (ii) produces a document to any person or to a court; and
 - (b) the information is protected information, or the document is a protected document; and
 - (c) the disclosure or production is not in accordance with subsection (3), (4), (5), (5AA), (5A), (5B), (5C), (6), (7), (7A), (7B) or (7C).

Penalty: Imprisonment for 2 years.

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- (5) It is not an offence if the disclosure of protected information or the production of a protected document by a person:
 - (a) occurs when the person is satisfied that the disclosure of the information, or the production of the document, will assist a financial sector supervisory agency, or any other agency (including foreign agencies) specified in the regulations, to perform its functions or exercise its powers and the disclosure or production is to that agency;¹ or
 - (b) is to another person and is approved by APRA by instrument in writing.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

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- (5A) It is not an offence if the production by a person of a document that was given to APRA under section 9 or 13 of the *Financial Sector (Collection of Data) Act 2001* is to the Australian Statistician for the purposes of the *Census and Statistics Act 1905*.

Note: A defendant bears an evidential burden in relation to matters in subsection (5A) (see section 13.3(3) of the *Criminal Code*).

¹ The ABS is specified for the purposes of paragraph 56(5)(a) of the APRA Act in regulation 5(d) of the *Australian Prudential Regulation Authority Regulations 1998*.

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- (9) If a person discloses information or produces a document under this section to another person, the first person may, at the time of the disclosure, impose conditions to be complied with in relation to the information disclosed or the document produced.
- (10) A person is guilty of an offence if the person fails to comply with a condition imposed under subsection (9).

Penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

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Relevant provisions of the Census and Statistics Act 1905

3. Interpretation

In this Act, unless the contrary intention appears:

- *determination* means a determination made under section 13
- *officer* means:
 - (a) a member of the staff of the Bureau referred to in subsection 16(1) of the Australian Bureau of Statistics Act 1975; or
 - (b) a person engaged in accordance with the regulations to assist in the carrying out of the functions of the Statistician; or
 - (c) a person who performs services in accordance with an arrangement made under section 16A of the *Australian Bureau of Statistics Act 1975*.
- *Statistician* means the Australian Statistician referred to in subsection 5(2) of the *Australian Bureau of Statistics Act 1975*.

12. Publication etc. of statistics

- (1) The Statistician shall compile and analyse the statistical information collected under this Act and shall publish and disseminate the results of any such compilation and analysis, or abstracts of those results.

- (2) The results or abstracts referred to in subsection (1) shall not be published or disseminated in a manner that is likely to enable the identification of a particular person or organization.
- (3) The Statistician may make charges for results and abstracts published and disseminated under this section.

13. Release of information

- (1) Notwithstanding anything in this Act (other than this section), the Minister may, by legislative instrument, make determinations providing for and in relation to the disclosure, with the approval in writing of the Statistician, of information included in a specified class of information furnished in pursuance of this Act.
- (2) Without limiting the generality of subsection (1), determinations may make provision:
 - (a) as to the persons to whom the information may be disclosed;
 - (b) as to the persons, being the persons from whom the information has been obtained, whose consent is required for the disclosure of the information; and
 - (c) specifying terms and conditions subject to which the information may be disclosed, including, but without limiting the generality of the foregoing, terms and conditions as to the requiring of a person to whom the information is, or is to be, disclosed to give an undertaking, in writing with respect to the disclosure of the information by that person, including an undertaking not to disclose any of the information to any person.
- (3) Information of a personal or domestic nature relating to a person shall not be disclosed in accordance with a determination in a manner that is likely to enable the identification of that person.

19. Secrecy

- (1) A person commits an offence if:
 - (a) the person is, or has been, the Statistician or an officer; and
 - (b) the person, either directly or indirectly, divulges or communicates to another person (other than the person from whom the information was obtained) any information given under this Act.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

(2) Subsection (1) does not apply if the person divulges or communicates the information:

- (a) in accordance with a determination under section 13; or
- (b) for the purposes of this Act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the Criminal Code).

(3) A person commits an offence if:

- (a) the person gives an undertaking of a kind mentioned in paragraph 13(2)(c), in relation to information disclosed to the person in accordance with a determination; and
- (b) the person fails to comply with the undertaking.

Penalty: 120 penalty units or imprisonment for 2 years, or both.